IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO.2074 OF 2005

Sukhvinder R.Malhotra. ...Petitioner.

Versus

Mrs.Geetanjali Sukhvinder Malhotra. ...Respondent.

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Mr.Rajesh S.Datar for the Petitioner.

Mr. M. M. Chopra for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

December 15, 2005.

P.C.:

Admit. By consent of parties taken up for hearing and final disposal.

2. The marriage between the Appellant and the Respondent was solemnised on 19th November 2000. Both the parties are Hindus. A male child was born out of the wedlock on 3rd July 2003. A matrimonial dispute has arisen between the parties and the parties are residing separately of a period of nearly 18 months. This First Appeal arises out of an application filed by the Appellant under the

provisions of the Guardians and Wards Act, 1890 praying for the custody of the minor child on the ground that the Respondent is suffering from a psychiatric disorder since November 2001. The application was heard by the Additional District Judge, Thane. Before the Trial Court it was not in dispute that the Respondent was under medical treatment for paranoid schizophrenia. The Appellant relied upon a medical certificate dated 6th December 2004 of Dr.Arvind Bhave, Consulting Psychiatrist. The medical certificate at Exh.38 was to the effect that the Respondent had been treated for paranoid schizophrenia though she has not followed up after November 2003. On the other hand, the Respondent relied upon a certificate of Dr.Niraj Ravani on 25th May 2005. Dr.Niraj Ravani, Consulting Neuropsychiatrist certified that she was under his treatment for schizophrenia since 27th March 2005. However, the doctor opined that she has no acute symptoms of schizophrenia and at present she has been taking treatment regularly and that she is leading a normal life.

3. The Learned Trial Judge was of the view that the certificate on which the Appellant relied upon was earlier in point of time, being

of the year 2003, while the certificate upon which the Respondent relies was more recent since it has been issued in May 2005. The Learned Trial Judge noted that the Respondent is an educated person and that she lives with her parents who are also in a position to take care of the welfare of the child. The Court was of the view that since the child is only aged two years, it would not be in the interest of the child to separate him from his mother. The application was dismissed. However, the Appellant and his parents were allowed to meet the child once in a week at the home of the parents of the Respondent without prior intimation for a period of two hours and to take the child on any two Sundays between 9.00 a.m. and 5 p.m.

4. When this First Appeal came up before this Court on 1st December 2005, the Court was of the view that it was necessary to have an independent medical evaluation in regard to the present condition of the Respondent inasmuch as that would have an important bearing on the question of custody of the minor child who is aged two and a half years. Parties were agreed that the Respondent would report for medical examination to the Head of the Department

of Psychiatry at Sir J. J. Group of Hospitals and a report was accordingly called for. Under cover of a communication dated 6th December 2005, the Medical Superintendent of Sir J.J. Group of Hospitals has forwarded a report of three doctors from the Department of Psychiatry who have examined the Respondent on 3rd, 5th and 6th December 2005. The report notes that the first episode of psychiatric illness was in 2001 lasting for approximately 15 days, and was a brief Psychotic Episode. The second episode took place in March 2001 and the Respondent is stated to have returned to a pre-morbid personality in two months. At present she is stated to be on anti-psychotic drugs and has no complaints. The Respondent is working in a Call Centre and is stated to be regular at her work place for seven months. The Medical examination shows that the mental status has been reported as being within normal limits. The doctors have opined that the schizophrenia is in complete remission. The patient is advised to continue medication.

5. At this stage, having regard to the experts' opinion which has been arrived at by an independent panel of medical Doctors of Sir

J.J. Group of Hospitals, it would be apparent that though the Respondent is under medical treatment, she is on anti-psychotic drugs and the schizophrenia is in complete remission. The Respondent is gainfully employed at a Call Centre and resides with her parents who are present in Court. The medical report shows that the Respondent is in a position to look after the child. The Respondent also has the support of her parents. During the course of these hearings , the matter was heard in Chambers on one occasion with a view to explore whether parties could amicably resolve their differences. Both Counsel have used their endeavours to enable parties to resolve their disputes but, that was without success. At this stage, I am of the view that it would not be in the interests of the welfare of the child to separate him from his mother. The child is two and a half years of age and it needs no emphasis that the child needs the care and affection of his mother. The Appellant was engaged in the Merchant Navy though at present he says that he does not have regular employment. In these circumstances, at the present stage, no case for varying the order of the Trial Court is made out. However, it is necessary to emphasise that orders regarding

custody can be modified if the welfare of the child demands. Hence, it would be open to the parties to move the Trial Court if there is a change in circumstances. In view of the Report received from the J.J. Hospital, to which there has been no objection from either side, the order for preservation of the custody of the child with the mother, for the present, is not opposed during oral arguments on behalf of the Appellant. This is a fair and reasonable attitude.

6. The Trial Court has granted to the Appellant access to the minor child on two Sundays in a month between 9 a.m and 5 p.m. Access has also been granted once a week, without prior intimation, at the home of the Respondent. At the hearing, both the parties were of the view that the provision of access at the home of the parents of the Respondent without prior intimation is liable to cause inconvenience to both sides and, therefore, that part of the order should be vacated. Ordered accordingly. Parties have also agreed that a modification in so far as the terms of access are concerned is warranted. By consent of the parties, there shall be a direction to the effect that the Appellant shall be entitled to take the child with

him between 5 p.m. on Friday and 6 p.m. on Sunday once every month and between 5 p.m. on Saturday and 6 p.m. on Sunday once a month. Access in the aforesaid terms will, by consent, be on alternate weekends. Parties have agreed that during the ensuing Christmas Vacation, the child shall reside with the father between 24th and 28th December 2005. On all days when access is to be taken, the Appellant shall collect the child from the residence of the Respondent and hand the child back to the mother at her residence after the period of access is over.

7. The appeal is accordingly disposed of.

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